

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT**

**MIDDLESEX, ss.**

**SUPERIOR COURT**

Civil Action No. MICV2013-00399-C

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JONATHAN GRAVES MONSARRAT,

Plaintiff,

v.

DEB FILCMAN, RON NEWMAN, and  
JOHN AND JANE DOES 1-100,

Defendants.

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**DEFENDANT RON NEWMAN’S MOTION TO DISMISS  
PURSUANT TO MASS. R. CIV. P. 12(b)(6)**

Pursuant to Mass. R. Civ. P. 12(b)(6), defendant Ron Newman hereby moves the Court to dismiss with prejudice all claims asserted against him in Plaintiff Jonathan Graves Monsarrat’s First Amended Complaint. By the present suit, Plaintiff seeks to suppress statements made in online discussion groups, by Newman and dozens of others, in the wake of news reports about Plaintiff’s 2010 arrest for disorderly conduct and liquor law violations. Plaintiff failed to state a claim under any theory he alleged, namely defamation, commercial disparagement, violations of Chapter 93A, common law copyright infringement, intentional infliction of emotional distress, and civil conspiracy. As grounds for the present motion, Newman states as follows:

1. Plaintiff has failed to state a claim against Newman for any statements made by third parties. Plaintiff claims to have been damaged by more than 1,000 online comments by persons other than Newman, but section 230 of the Communications Decency Act, 17 U.S.C. § 230, provides Newman an absolute immunity from liability for third-party statements.

2. Plaintiff has failed to state a claim against Newman for defamation or commercial disparagement. Plaintiff cites only four specific statements made by Mr. Newman as defamatory, three of which merely state facts or opinion based on disclosed facts, to the extent they are “of and concerning” Plaintiff at all. The fourth points to old MIT student newspaper articles that Plaintiff does not even allege are false or defamatory. Plaintiff failed to allege facts sufficient to plausibly suggest falsity or defamatory meaning as required to state a defamation claim. The same failures void Plaintiff’s claim of commercial disparagement, as does Plaintiff’s failure to allege that his products or services were disparaged, or that Newman was his commercial rival.

3. Plaintiff has failed to state a claim against Newman under Chapter 93A. Plaintiff did not allege any facts showing that Newman acted in the course of “trade or commerce,” so the allegations lack the business context required to state a Chapter 93A claim.

4. Plaintiff has failed to state a claim for common-law copyright infringement. Plaintiff does not allege that Newman is directly liable under this cause of action, but alleged that Newman was part of a conspiracy to infringe upon his intellectual property. Common-law copyright was abolished by the Copyright Act of 1976, which preempts Plaintiff’s claims and any claims based on common-law copyright.

5. Plaintiff has failed to state a claim against Newman for intentional infliction of emotional distress. The only acts by Newman that Plaintiff alleges to be wrongful are his Internet postings, which fall far short of the degree of “extreme and outrageous conduct” required to be deemed a legal cause of Plaintiff’s distress. Newman’s posts let the facts speak for themselves and are privileged from defamation claims, so he cannot be subject to liability under this theory.

6. Plaintiff has failed to state a claim against Mr. Newman for conspiracy. Plaintiff does not allege any statement or action by which Mr. Newman agreed to injure him, or any predicate tortious act by Mr. Newman in furtherance of such a non-existent agreement.

7. The grounds for the present motion are set forth more fully in the accompanying memorandum of law served and filed concurrently herewith.

WHEREFORE, Defendant Ron Newman respectfully requests that the Court dismiss all counts of the Complaint with prejudice and grant such further relief as is meet and just.

Dated: June \_\_\_\_, 2013

RON NEWMAN

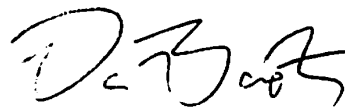
By his attorney,



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#### **CERTIFICATE OF SERVICE**

I hereby certify that on this day, a true copy of the above document was served by mail upon the attorney of record for each party who has entered an appearance in this action.



Dated: June \_\_\_\_, 2013

Daniel G. Booth (BBO# 672090)